

COMMONWEALTH OF VIRGINIA

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SENATOR MAMIE LOCKE, Vice-chair
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VIRGINIA HOUSING COMMISSION

SUMMARY

Neighborhood Transitions and Residential Land Use Work Group

July 15, 2015, 10 A.M.

Senate Room A, General Assembly Building

I. Welcome and Call to Order

- **Senator Mamie Locke**, *chair*, called the meeting to order at 10AM.
- **Work Group Members in attendance:** Delegate David Bulova; Delegate Betsy Carr; Delegate Daniel Marshall; Mark Flynn, *Gubernatorial Appointee*; Laura Lafayette, *Gubernatorial Appointee*; T.K. Somonath, *Gubernatorial Appointee*; Neal J. Barber, *Community Futures*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured and Modular Housing Association*; Cindy Davis, *Building Codes/Dept. of Housing and Community Development*; Chip Dicks, *Virginia Association of Realtors*; Chris Freund, *Family Foundation of Virginia*; Brian Gordon, *Apartment and Office Building Association*; Kelly Harris-Braxton, *Virginia First Cities*; John H. Jordan, *Manufactured Housing Communities*; Erik Johnston, *Virginia Association of Counties*; Ted Koebel, *Center for Housing Research at Virginia Tech*; Barry Merchant, *Virginia Housing Development Authority*; A. Vaughn Poller, *Hampton Roads Housing Consortium*; Elizabeth Rafferty, *Department of Housing and Community Development*; Earl Reynolds, *City of Danville, Community Development Director*; Michael Toalson, *Homebuilders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*
- **Staff:** Elizabeth Palen, *Executive Director of VHC*

II. Stalking; Early Termination of Rental Agreements (HB 1902; Patron Lopez; 2015)

- **Susheela Varky**, *Virginia Poverty Law Center*: This is a bill to allow early lease termination for victims of stalking. The first iteration of the bill had both an improvement to the stalking definition as well as this early termination provision. The stalking definition change was removed.
 - In the proposed legislation, the victim of stalking is added to the list of tenants who may exercise early termination of rental agreements. They must either have a two-year family abuse protective order or a conviction of stalking.

DELEGATE DANIEL W. MARSHALL, III
DELEGATE DAVID L. BULOVA
DELEGATE BETSY CARR
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

- In 2013, a bill passed to allow early lease termination for sexual and domestic violence victims. To qualify, the tenant must obtain either a family abuse protective order or an order convicting the abused of sexual assault, sexual abuse, or family abuse.
 - Certain limitations were placed upon this, including serving written notice 30-days prior to the next rent due date to the landlord which must include a copy of the order or conviction with the notice. In addition, the protective order must be in effect when the termination notice is given and the tenant can only use the conviction order twice to terminate no more than two leases.
 - There was a consensus that a stalking conviction to be used to terminate the lease early within 90 days of the date of conviction order.
- **Chip Dicks, Virginia Association of Realtors:** The bill from 2013 was a difficult compromise in the industry. Some of these events do not have any direct connection to the landlord tenant relationship. The real estate industry is still committed to the compromise, provided more energy is spent on the expanded definition of stalking.
 - **Varky:** In this bill, the improvement to the stalking definition was removed.
- **Locke:** Without the stalking legislation in place, what is the likelihood of this legislation going forward?
 - **Varky:** If the bill had passed, it would have just focused on the definition of stalking as it exists today.
- **Michael Toalson, Homebuilders Association of Virginia:** Is there a requirement in the statute for stalking having occurred at the place of residence?
 - **Varky:** That was part of the discussion for this bill and that from 2013.
- **Delegate Bulova:** Without change to the stalking definition, it sounds like you had a compromise worked out. Is it likely that the change to the stalking definition will move forward? If the stalking definition is in flux, what would need to be changed to get this to pass?
 - **Dicks:** I think there will be advocacy in changing the stalking definition. The bipartisan nature of that indicates that enough constituents feel that is an issue. We tried to take the stalking definition out of Delegate Lopez's bill and let it be handled by Delegate Miller and Senator McEachin's bill, and let the General Assembly decide what to do with that. I think the offence should have some nexus with the property. We don't want to expand the existing statute the way it is.
- **Bulova:** Are we going to have another version that this body can view prior to session?
 - **Dicks:** I think the purpose of this is to create the forum discussion to occur, so it need not happen during session.
 - **Varky:** I agree.
- **Dicks:** We will create some language and share it with industry partners and others. We can let the Housing Commission look at it.

III. Mandated Disclosure; Recurrent and Nuisance Flooding

- **Fred Brusso**, *Director, Neighborhood Advancement, City of Portsmouth*:
Flooding is the single largest cause of property loss in the United States. Some events occur slowly, allowing time to prepare, while others are rapid. Frequency and intensity of storms have increased over the past decade.
 - We are also a community that sees a large turnover of residents due to the number of military installations in the city. We have a large amount of flyers and pamphlets to try to keep residents prepared.
 - Portsmouth is very active in trying to reach out to citizens. However, as soon as each outreach project is mailed, it's ineffective. We need new methods and partners. Real Estate Agents, Lending Institutions, Insurance Agents, Churches, Civic Leagues, Youth Sports Groups, and Business Associations are some new suggestions.
 - We request that the General Assembly review the issue of mandatory disclosure. We request the following to be disclosed at the time of a property listing: disclosure of building being located in a special Flood Hazard Zone, and a statement from the owner on the length of time they have owned the property and number of times flood damages have occurred during that period.
 - Providing information benefits the locality. Many states already have mandatory disclosure. Methods of disclosure could include a map or a seller affidavit. With sea level rise, concerns for mandatory disclosure will only increase.
- **Dicks**: If this had already been proposed to the flood commission then is it because the flood commission rejected your proposal?
 - **Brusso**: We felt the original bill was modified during its passage and did not provide the information needed to a homeowner.
- **Dicks**: I understand someone presented this to the flood study commission last year. What happened after you presented the proposal for mandatory disclosure? The flood commission recommended the bill and not the approach you proposed, correct?
 - **Brusso**: Correct.
- **Dicks**: So you're here today because the flood commission did not propose what you felt it should, and so you're asking the Housing Commission to take a second look and something the flood commission did not recommend.
 - **Brusso**: Correct.
- **Toalson**: Would it be appropriate with all your outreach to wait to see if the new legislation is effective?
 - **Brusso**: With FEMA's new map service, we felt that massive improvement could be given at the listing. We've done a tremendous amount of research to discover if there has been damage done to a piece of property.
 - **Toalson**: Should we wait and see if the recommendation passed will do some good?

- **Brusso:** We do not think it has the necessary components to help individuals purchasing a house. We have had a tremendous change in flood insurance premiums. If you don't know you're in a flood zone, you're moving towards foreclosures for those with high flood insurance.
- **Toalson:** "We" is the city of Portsmouth.
 - **Brusso:** Yes.
- **Toalson:** This is the approach the General Assembly chose to take, and I believe we should see if this approach works before we take another step.
 - **Brusso:** I disagree.
- **Dicks:** The purpose of this is to protect a buyer from buying property in a flood zone.
 - **Brusso:** And has had flood damage.
- **Dicks:** I am alerted that I may be in a flood zone by the new legislation and it is my responsibility to determine if I am in a flood zone. I that correct.
 - **Brusso:** Yes.
- **Dicks:** I find out I am in a flood zone. How does the seller begin to know that part of the property being in a flood zone affects the buyer's decision? What does the buyer get that they cannot already find out about?
 - **Brusso:** I agree in some communities you can go on a website and find this information. The rest may or may not.
- **Dicks:** I agree there is an absence of information available. The seller often times doesn't know either.
 - **Brusso:** Most people do not know where to go look to determine if they are in a flood zone. We have done mailings and maps and constantly have people calling asking if they are in a flood zone. Dealing with disclosure if there was prior flooding, the individual can only ask the seller for that information.
- **Dicks:** Sellers, buyers, and localities all care about flooding. The dialogue between us indicates a disagreement about mandatory disclosure. Part of the problem is that flood maps are always changing, and we would not impose that burden on sellers. However, if the house has had undisclosed flood damage, the buyer can sue the seller under existing law. There are protections for the buyer without burdening the seller.
- **Bulova:** How does an average buyer know where to look in order to get that information? What is the professional obligation of a realtor who has a client who wants to know if a property is in a flood zone? I expect a real estate agent would know how to get that information.
 - **Dicks:** For the realtors, there is a code of ethics. For real estate licensee does not. Licensing statutes impose a duty upon a buyer agent to assist their client with all these issues set out in the statute. They would check for sex offenders, etc. There are professional obligations.
- **Toalson:** The large majority of new homes require financing. In conjunction, the buyer hires a real estate lawyer to conduct the closing. The first thing the real estate lawyer will do is determine whether the property is in a flood zone and the costs. There are other safeguards in the process.

- **Brusso:** I disagree. Much of that occurs after the listing and a contract has been signed.
- **Toalson:** That is certainly a reason to cancel the contract. I suggest that is a safeguard for the buyer.
 - **Brusso:** The issue for the premium costs occurs late in the closing process. If you are informed at the listing, then you can make a qualified decision.
- **Toalson:** You disagree that the lawyer telling you that you are in a flood zone is not a safeguard?
 - **Brusso:** I think it occurs at too late a time. There are too many times that the buyer is using the seller's attorney.
- **Laura Lafayette, Gubernatorial Appointee:** The public policy in place today allows to buyer to make all these determinations before they ever start looking. The buyer has every right to go on the website and do all that analysis by themselves. There is no reason to go near the closing table without having looked all this through.
- **Sherry Neil, Intergovernmental Affairs Director, City of Portsmouth:** I purchased a home in Hampton, not in a flood zone. I got flood insurance anyway. We had a hurricane and had some flooding. None of this would have been disclosed because we do not live in a flood zone. If the seller provides a form to give some information on the property while they lived there, that would provide very valuable information.
- **Lafayette:** The law already requires that the seller make that indication. This would be redundant.
 - **Neil:** I did all due diligence and found this information on my own.
- Is there anything there preventing the buying agent from asking the listing agent if there has been any flooding? If there is any misrepresentation there they are then in violation of the law.
 - **Dicks:** That is correct. If that information was requested as part of the contract and there was a misrepresentation by the seller, then that would be actionable. I wouldn't begin to guess whether a property is in a flood zone based on the changes. Somebody needs to get a survey and determine those things. We encourage all buyers to research this information pre-contract.
- **Barry Merchant, Virginia Housing Development Authority:** For those rights to be effectively exercised, it requires an informed buyer. I suspect this concern is greatest among first-time buyers without the knowledge base. I suggest another alternative is homebuyer education to ensure these things are addressed.
- **Kelly Harris-Braxton, Virginia First Cities:** It does not seem like this is a tremendous burden to ask a seller whether or not something happened while they owned the property. Of course, that affects how much they can get for the property. To say that you do not have to be that savvy to get that information is not accurate. How does this compare to a lead paint analysis? You have to expose if there is lead paint on your property versus having to explain if there has been flooding on the property? Is that a tremendous burden?

- **Dicks:** The law is that after a problem is fixed, you no longer have to disclose the issue. So if there were some flood damage, after the damage is repaired you would not have to disclose the flooding, unless it was repetitive damage. With regards to lead paint, there is a federal law that requires an EPA disclosure and acknowledgment of a tenant. Once the lead based paint is remediated, there is no further disclosure obligation under federal law.
- **Erik Johnston, Virginia Association of Counties:** We do not have a position on this issue. I thought the idea on homeowner education was very interesting.
- **Brusso:** Regarding what Mr. Dicks said about surveys given at closings-- today, maybe 25% of properties included a survey as part of closing papers. At the time of a loss, you are looking at trying to fix your home. Instead of waiting and reacting to an event, we hope to have the knowledge and the beginning.
- **Locke:** We should not decide whether or not to move forward with this issue.
- **There was a motion and a second to not move forward on this issue.**
- **There was a substitute motion to move the issue forward.**
 - **The motion did not receive a second.**
- **The main motion to not move it forward was passed.**

IV. Public Comment

- **Senator Locke** asked for public comment

V. Adjournment

- Upon hearing none, **Senator Locke** adjourned the meeting at 11:30 AM.